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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

19 CR 116 (KMW) (DCF)
Remote Plea

5 RAYMOND RESTO,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 26, 2021
10 9:00 a.m.

11 Before:

12 HON. DEBRA C. FREEMAN,

13 Magistrate Judge

14 APPEARANCES

15 AUDREY STRAUSS

16 United States Attorney for the
Southern District of New York

17 MICHAEL KROUSE

Assistant United States Attorney

18 JAMES E. NEUMAN

19 Attorney for Defendant

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1 (The Judge and all parties appearing via
2 teleconference)

3 (Case called)

4 DEPUTY CLERK: Counsel, starting with the government,
5 please state and spell your name for the record.

6 MR. KROUSE: Yes. This is Michael Krouse. Good
7 morning, your Honor. For the United States. My name is
8 spelled M-I-C-H-A-E-L. K-R-O-U-S-E.

9 THE COURT: Good morning.

10 Counsel for defendant?

11 MR. NEUMAN: Yes. Good morning. This is James Neuman
12 for Raymond Resto. That's J-A-M-E-S. N-E-U-M-A-N.

13 THE COURT: Is the defendant present? Is Mr. Resto
14 there?

15 THE DEFENDANT: Yes.

16 THE COURT: Does Mr. Resto need an interpreter?

17 THE DEFENDANT: No.

18 THE COURT: Is there anyone else present who may be
19 participating in this conference today? No? No one from
20 probation, for example, or anyone else?

21 THE DEFENDANT: No.

22 THE COURT: All right. I want to make sure first that
23 everyone is able to hear and understand the other people on the
24 line. Let me first ask if, Mr. Resto, if you can hear me
25 clearly and you can understand me.

LlQQresP

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: If at any time you cannot hear or
3 understand what is being said, will you please interrupt the
4 proceeding and let me know?

5 THE DEFENDANT: Yes, I will.

6 THE COURT: OK. And if at any time you wish to
7 consult with your attorney privately, will you please tell me
8 that as well?

9 THE DEFENDANT: OK.

10 THE COURT: I want to make sure both counsel can hear.
11 Mr. Krouse, can you hear me clearly?

12 MR. KROUSE: Yes, your Honor.

13 THE COURT: Mr. Neuman, can you hear me clearly?

14 MR. NEUMAN: Yes, your Honor.

15 THE COURT: I'm going to ask that before either of the
16 attorneys speaks at this proceeding, please identify yourselves
17 by name.

18 Do we have a court reporter present?

19 (Replies)

20 THE COURT: Mr. Resto, if you seem to me to be getting
21 kind of quiet, I might ask you to speak louder too, and I'm
22 going to ask the court reporter to please say something if
23 you're having trouble hearing.

24 This telephone conference line, you should also
25 understand, is open to the public and press on a listen-only

LlQQresP

1 basis. If you happen to be a member of the public or press,
2 please mute your line. Please keep it on mute, and also be
3 aware that just as if you were physically present in the
4 courtroom, you are prohibited from recording, rebroadcasting or
5 disseminating any proceedings of court proceedings including
6 this one. Violation of these prohibitions may result in
7 sanctions.

8 Mr. Resto, I am Judge Freeman, and under normal
9 circumstances everyone participating in this proceeding today
10 would be physically present in a courtroom. But we are still
11 in the midst of a pandemic, and to ensure everyone's safety and
12 avoid the spread of the COVID-19 virus, we are conducting this
13 proceeding remotely specifically by telephone conference
14 pursuant to the authority provided by the CARES Act and the
15 standing orders of this court.

16 Under that Act, I find that videoconferencing is not
17 reasonably available to conduct this proceeding. The
18 facilities for videoconferencing that we have available are
19 extremely limited, and there is insufficient availability for
20 everyone who wishes to use it to do so.

21 In addition under the CARES Act, in the case of any
22 plea or sentence conducted by video or telephone conference,
23 the district judge presiding over the case must determine
24 whether the proceeding cannot be further delayed without
25 serious harm to the interest of justice. In this case Judge

LlQQresP

1 Wood has made that finding in a written order dated January 11.

2 I would like to confirm with defense counsel the
3 nature of your ability to have conferred with your client
4 sufficiently prior to this proceeding today. So I'm going to
5 ask defense counsel, can you please just generally describe the
6 nature of the content that you've been able to have with
7 Mr. Resto to prepare for this plea?

8 MR. NEUMAN: Yes, your Honor. Well, I have been in
9 intermittent, but I would say regular, telephone contact with
10 Mr. Resto for months. We spoke most recently last week, and I
11 think I spoke to him maybe a week before that, and again the
12 week before that, and we had fully discussed the plea. We've
13 had the plea agreement for awhile and went over it by phone
14 initially some time ago, and then I did that again, your Honor,
15 this last week.

16 I've also mailed him hard copies of the plea
17 agreement. I don't know whether that's been received or not,
18 but we have gone through everything, all the pertinent parts
19 several times.

20 THE COURT: Has Mr. Resto also seen the indictment or
21 has it been read to him?

22 MR. NEUMAN: Yes. Yes.

23 THE COURT: Did you discuss with Mr. Resto whether he
24 was willing to consent to proceed with a guilty plea by
25 telephone?

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1 MR. NEUMAN: Yes, I did. I explained to him his
2 constitutional right to be present, and I discussed with him
3 the CARES Act and the custom that was happening recently
4 because of the pandemic, and he agreed to proceed in this
5 proceeding by telephone.

6 THE COURT: It was your understanding based on your
7 conversation that Mr. Resto understood his right to be present
8 in the courtroom and is willing to give up that right?

9 MR. NEUMAN: Yes, and I also told him that I would be
10 signing the form on his behalf, and he consents to that.

11 THE COURT: I'm going to go over the form that you
12 have provided to the court with Mr. Resto just to make sure he
13 understands.

14 Mr. Resto, I have a form that's entitled Waiver of
15 Right to be Present at Criminal Proceeding, and it's been
16 signed by on your behalf by Mr. Neuman.

17 The form in the relevant portion says the following
18 from you:

19 "I am aware that I have been charged with violations
20 of federal law. I have consulted with my attorney about those
21 charges.

22 "I have decided that I wish to enter a plea of guilty
23 to certain charges.

24 "I understand I have a right to appear before a Judge
25 in a courtroom in the Southern District of New York to enter my

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1 plea of guilty and to have my attorney beside me as I do.

2 "I am also aware that the public health emergency
3 created by the COVID-19 pandemic has interfered with travel and
4 restricted access to the federal courthouse. I have discussed
5 these issues with my attorney. By signing this document I wish
6 to advise the court that I willingly give up my right to appear
7 in person before the Judge to enter a plea of guilty.

8 "By signing this document, I also wish to advise the
9 Court that I willingly give up any right I might have to have
10 my attorney next to me as I enter my plea so long as the
11 following conditions are met:

12 "I want my attorney to be able to participate in the
13 proceeding and to be able to speak on my behalf during the
14 proceeding. I also want the ability to speak privately with my
15 attorney at any time during the proceeding if I wish to do so."

16 Did you have a chance to discuss that, what I've just
17 read, with your attorney before you decided to proceed today by
18 telephone?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: I'm sorry, I can't hear you.

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: OK. Do you understand that if you wish to
23 have an opportunity to speak with your attorney privately, I
24 will arrange for you to do that?

25 THE DEFENDANT: Yes, your Honor.

LlQQresP

1 THE COURT: Do you in fact consent to participate in
2 this plea proceeding by telephone with your attorney also
3 participating separately by phone?

4 THE DEFENDANT: Yes, your Honor, I do.

5 THE COURT: I will accept the consent to proceed
6 remotely.

7 Counsel, did you also discuss with Mr. Resto whether
8 he was willing to consent to have his guilty plea conducted by
9 a United States Magistrate Judge?

10 MR. NEUMAN: Yes. This is James Neuman again.

11 I did discuss his right, his constitutional right to
12 have this proceeding being conducted by a district judge. I
13 asked him if he'd be willing to proceed before a magistrate,
14 and I also discussed the form that would indicate that we've
15 discussed this issue and that he agrees to have all Rule 1
16 proceedings be conducted before a magistrate, and he indicated
17 that he consents to that.

18 THE COURT: Mr. Resto, the indictment in this case
19 charges you with a felony crime, and you have a right to a
20 trial on the charge before a United States District Judge.

21 If you are found guilty, you will be sentenced by a
22 United States District Judge. And ordinarily a defendant who
23 wishes to enter a plea to this type of charge would do that
24 before the district judge as well, and that judge would then
25 conduct what's called a plea allocution, which is the

LlQQresP

1 question-and-answer session that must accompany the entry of a
2 guilty plea.

3 With the defendant's consent, however, a United States
4 Magistrate Judge, such as myself, also has the authority to
5 take a plea. If you were to consent to proceed before a
6 magistrate judge for the purpose of entering a plea, you would
7 receive all of the same procedural protections as you would
8 receive if you were proceeding before the district judge.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Is it your wish to consent to proceed
12 before a magistrate judge for the purposes of entering a plea?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: I do have a form that's entitled Consent
15 to Proceed Before a United States Magistrate Judge on a Felony
16 Plea Allocution. Again, your attorney has signed the form for
17 you. Did he explain that form to you?

18 THE DEFENDANT: Yes, he did, your Honor.

19 THE COURT: Have any threats or promises of any kind
20 been made to you to cause you to agree to this procedure today?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: All right. I will accept your consent to
23 proceed before a magistrate judge.

24 Now, in order to take your plea, I must ask you some
25 questions for which I need to place you under oath. Would you

LlQQresP

1 please raise your right hand and confirm to me that you are
2 raising your hand.

3 THE DEFENDANT: I'm raising my right hand.

4 (Defendant sworn)

5 THE COURT: You can put your hand down.

6 Please state your full name for the record.

7 THE DEFENDANT: Raymond Anthony Resto.

8 THE COURT: Are you a United States citizen?

9 THE DEFENDANT: Yes.

10 THE COURT: How old are you?

11 THE DEFENDANT: 26 years old.

12 THE COURT: How far did you go in school?

13 THE DEFENDANT: Tenth grade. I have my GED.

14 THE COURT: Tenth grade, and you have your GED?

15 THE DEFENDANT: Yes, I do, ma'am.

16 THE COURT: Are you now or have you recently been
17 under the care of a doctor for any reason?

18 THE DEFENDANT: Yes. Yes, your Honor.

19 THE COURT: Can you tell me generally the reason
20 you've been under the care of a doctor?

21 THE DEFENDANT: Well, I received -- I just received
22 pills like Tylenol because I caught the COVID, I have COVID-19.

23 THE COURT: You have COVID now?

24 THE DEFENDANT: Yes.

25 THE COURT: So you've been under the care of a doctor

LlQQresP

1 for that?

2 THE DEFENDANT: Not -- just pills. Just Tylenol.

3 THE COURT: Tylenol, OK. Do you take any other kind
4 of medication?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Do you have any other kind of physical
7 condition for which you need medical care?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Have you seen a psychiatrist or a
10 psychologist recently?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Do you have any condition that affects
13 your ability to hear?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Do you have any condition that affects
16 your ability to think or to reason or to understand or make
17 decisions or judgments on your own behalf?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Have you ever been treated for drug
20 addiction or alcoholism?

21 THE DEFENDANT: Well, I went to rehab. I went to a
22 rehab for marijuana and alcohol addiction.

23 THE COURT: How long ago was that?

24 THE DEFENDANT: Two thousand -- I want to say 1999.

25 THE COURT: So awhile ago?

LlQQresP

1 THE DEFENDANT: And again in 2013.

2 THE COURT: All right. As you appear before me today
3 on this call, are you under the influence of any kind of drugs
4 or alcohol or medication?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Is your mind clear today?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you generally feel all right today?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you have any trouble understanding the
11 questions I'm asking you?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Have you received a copy of the indictment
14 in this case?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Have you had a chance to read it or do you
17 want me to take the time to read it to you?

18 THE DEFENDANT: I've read it, your Honor. I'm OK with
19 it.

20 THE COURT: OK. Do you understand what it says you
21 did?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Have you had enough time to talk to your
24 attorney about the charge and about how you wish to plead?

25 THE DEFENDANT: Yes, your Honor.

LlQQresP

1 THE COURT: Are you satisfied with the representation
2 and advice given to you by your attorney?

3 THE DEFENDANT: Absolutely, yes, your Honor.

4 THE COURT: All right. Are you ready to enter a plea?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: All right. I have a copy of a plea
7 agreement which indicates that Mr. -- I'm sorry -- that
8 indicates that the government is prepared to accept a guilty
9 plea to a lesser included offense. I'm assuming that is what
10 Mr. Resto would be pleading to.

11 Is that right, counsel?

12 MR. KROUSE: This is Michael Krouse, your Honor. Yes.

13 MR. NEUMAN: Yes. Mr. Neuman, yes.

14 THE COURT: All right. So just bear in mind,
15 Mr. Resto, that Count One of the indictment charges you with
16 conspiring to distribute and possess with intent to distribute
17 400 grams and more of fentanyl, one kilogram and more of heroin
18 and five kilograms and more of cocaine.

19 The plea agreement states that the government will
20 accept a guilty plea to the lesser included offense of
21 conspiring with others to distribute and possess with intent to
22 distribute a quantity of mixtures and substances containing
23 detectable amounts of fentanyl, heroin and cocaine in violation
24 of Title 21 of the United States Code, Sections 841(b)(1)(C)
25 and 846.

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1 How do you wish to plead to that lesser included
2 offense? Guilty or not guilty.

3 THE DEFENDANT: Yes, guilty.

4 THE COURT: All right. Because you are proposing to
5 enter a guilty plea, I have to ask you some additional
6 questions to be sure that you understand the nature of the
7 charge against you to which you are pleading and the
8 consequences of your plea and also to ensure that your plea is
9 voluntary.

10 First, I want you to understand that if you are
11 convicted of this lesser included offense to which you are
12 seeking to plead guilty, you could face a maximum sentence of
13 20 years' imprisonment, a maximum term of supervised release of
14 life, a mandatory minimum term of supervised release of three
15 years, a maximum fine of the greatest of \$1 million or twice
16 the gross pecuniary gain or monetary gain that you derived from
17 the offense or twice the gross pecuniary loss to persons other
18 than yourself resulting from the offense, and a mandatory
19 special assessment of \$100.

20 Do you understand all of that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you also understand that if convicted
23 of this crime, the court may require you to pay restitution to
24 any victims of the crime?

25 THE DEFENDANT: Yes, your Honor.

LlQQresP

1 THE COURT: Do you also understand that if you are
2 convicted, you could be required to forfeit all property, real
3 and personal, that constitutes or derives the proceeds
4 traceable to your crime?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you also understand that if as part of
7 your sentence you are placed on a term of supervised release
8 and you then violate any condition of that release, your
9 supervised release may be revoked, and you may face an
10 additional term of imprisonment?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand that if that should
13 happen, if your supervised release is revoked, the court may
14 order you to serve in prison all or part of the term of
15 supervised release that's authorized by law for this offense
16 without giving you credit for the time that you may have
17 already served on supervised release?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that you have a right to
20 plead not guilty to the charge and the right to a speedy and
21 public trial and a jury trial if you wish?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that if you previously
24 entered a plea of not guilty, you are not required to change
25 your plea?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that if you were to go
3 to trial, the burden would be on the government to prove your
4 guilt by competent evidence beyond a reasonable doubt?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand that if you were to go
7 to trial, you would be presumed to be innocent unless and until
8 the government did prove your guilt beyond a reasonable doubt?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand that if you were to go
11 to trial by jury, a jury composed of 12 people selected from
12 this district would have to agree unanimously that you are
13 guilty?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand that at a trial, you
16 would be entitled to be represented by an attorney, and if you
17 could not afford to hire one, an attorney would be provided to
18 you free of charge?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that your right to be
21 represented by counsel, and if necessary to have the court
22 appoint counsel for you, applies not only to the trial itself
23 but also to every other critical stage of the proceedings
24 against you?

25 THE DEFENDANT: Yes, your Honor.

LlQQresP

1 THE COURT: Do you understand that at a trial you
2 would be entitled through your attorney to cross-examine any
3 witnesses called by the government to testify against you?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that at a trial you
6 would be entitled to testify and to present evidence on your
7 own behalf?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that this means that you
10 would have the right to call witnesses to testify on your
11 behalf?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you also understand that you would be
14 entitled to have the court issue subpoenas to compel witnesses
15 to appear and testify at trial?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that at a trial you
18 would not be required to incriminate yourself; that is, you
19 would not be required to testify against yourself?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that this means that at
22 a trial, you would have the right to testify if you wanted to
23 do so, but no one could force you to testify if you did not
24 want to do so, and, furthermore, no inference or suggestion of
25 guilt could be drawn if you chose not to testify at trial?

LlQQresP

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that if you go forward
3 with your guilty plea, you will be giving up all of these types
4 of protections that I've just described, including your very
5 right to a trial, and that the only remaining step will be the
6 imposition of sentence by the district judge in this case, who
7 is Judge Wood?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that if any of the
10 answers that you give me today prove to be untruthful, you
11 could face a separate prosecution for perjury or for making a
12 false statement to the court?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you understand that if you plead guilty
15 and your guilty plea is accepted and you are adjudged guilty,
16 that adjudication may deprive you of valuable civil rights,
17 such as the right to vote in some jurisdictions or to hold
18 public office or to serve as a juror or to possess a firearm?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you still wish to plead guilty in light
21 of everything I've told you so far?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that the decision as to
24 the appropriate sentence in your case will be entirely up to
25 Judge Wood?

LlQQresP

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that Judge Wood will
3 have discretion in determining your sentence, and that her
4 discretion will be limited only by what the law requires for
5 the particular offense to which you have pleaded guilty?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that in determining your
8 sentence, the court will have the authority to impose an order
9 of restitution and an obligation to impose a special
10 assessment?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand that in determining your
13 sentence, the court will also have the obligation to calculate
14 and consider the so-called Sentencing Guidelines even though it
15 will not be required to sentence you within the guidelines
16 range?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Have you and your attorney had a chance to
19 talk about how the guidelines may be calculated in your case?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that the court will not
22 be able to determine the guidelines for your case until after a
23 presentence report has been completed, and both you and the
24 government have had the chance to challenge the facts reported
25 there by the probation officer?

LlQQresP

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that even after the
3 guidelines calculation has been made for a case, the sentencing
4 judge will have the authority to impose a sentence that is
5 either less severe or more severe than the sentence recommended
6 by the guidelines as long as it's within the statutory maximum
7 for the charged crime?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that in addition to
10 considering the sentencing guidelines, the court will also have
11 to consider possible departures from the guidelines and a
12 number of different factors in deciding on the appropriate
13 sentence to impose in your case?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Have you and your attorney had a chance to
16 talk about the various factors that are listed in the relevant
17 provision of law that's Title 18 of the United States Code,
18 Section 3553(a) and about how those different factors may apply
19 to you in your particular case?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that those factors
22 include, but are not limited to, the actual conduct in which
23 you engaged, the victim of the offense, the role you played in
24 the offense, whether or not you have accepted responsibility
25 for your acts, whether you have any criminal history, and

LlQQresP

1 whether you have engaged in any obstruction of justice?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that even if you end up
4 shocked and disappointed by your sentence, you will still be
5 bound by your guilty plea?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that under some
8 circumstances, you or the government may have the right to
9 appeal the sentence that is imposed?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that there is no parole
12 in the federal system, and that if you are sentenced to prison,
13 you will not be released on parole?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Understanding everything I've just told
16 you, do you still wish to plead guilty?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: I do have a copy of a plea agreement
19 between you and the government. It's a letter dated July 10,
20 2020 from the office of the United States Attorney to your
21 counsel.

22 Counsel, the copy that I have in front of me is not a
23 signed copy. Maybe I just printed it out too soon. Let me ask
24 my deputy. Do you also have a signed copy?

25 MR. NEUMAN: No, your Honor.

LlQQresP

1 MR. KROUSE: No, your Honor. Your Honor, this is
2 Michael Krouse for the government. I can transmit a signed
3 copy from me and my unit chief. It's all been done remotely,
4 so I don't have an actual physical copy either.

5 THE COURT: That's fine. Let me just ask on the
6 record to have counsel both for the government and for the
7 defendant to confirm that they have signed this agreement and
8 to confirm whether Mr. Resto's signature has been obtained or
9 has been signed by counsel on his behalf. Starting with the
10 government.

11 MR. KROUSE: Yes, your Honor, the government has
12 signed the plea agreement.

13 THE COURT: Hold on one second. Did we just lose
14 somebody on the call?

15 THE DEFENDANT: Hello?

16 THE COURT: Hold on one second. Let me ask my deputy.
17 Did someone just drop off whom we need? I might have lost my
18 deputy.

19 Let me confirm we have everybody else. Do I have
20 counsel for the government?

21 MR. KROUSE: Yes, I'm still here, your Honor.

22 THE COURT: Mr. Neuman, are you still there?

23 MR. NEUMAN: I'm still here, your Honor.

24 THE COURT: Is the court reporter still there?

25 (Replies)

LlQQresP

1 THE COURT: Mr. Resto, I know you're still there,
2 right?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: The person who is controlling the
5 so-called dashboard for this call is my deputy, and it seems
6 like we may have lost her which, may be a bit problematic, but
7 only if we need to do something -- Aisha, are you back?

8 DEPUTY CLERK: That's me.

9 THE COURT: All right. We lost you. You're back.

10 DEPUTY CLERK: Look at your cell. I'll let you know
11 if I drop off again.

12 THE COURT: OK. We figured out that it was you.

13 I was starting to say the only reason that it's
14 critical to have my deputy on the line is if we want to put
15 someone in a private room to talk separately or something along
16 those lines because she is controlling the computer monitors
17 that allows us to do that. If we run into a problem like that,
18 we will await her return and sort it out. Otherwise, we will
19 miss you, but we will carry on, Aisha.

20 What we were doing was going through whether the plea
21 agreement had been signed. The copy I have is dated July 10.
22 And if you could just confirm it was signed without any
23 revisions to the copy that was sent to me.

24 Counsel for the government?

25 MR. KROUSE: Yes, your Honor, I can confirm that.

LlQQresP

1 THE COURT: That was Mr. Krouse.

2 And on defendant's side, Mr. Neuman?

3 MR. NEUMAN: Yes, your Honor, I have signed it, and I
4 have not actually gone through the physical process of having
5 Mr. Resto sign it. I think I was assuming that we would put on
6 the record that he had -- either that I can sign it for him or
7 that your Honor can sign it for him.

8 THE COURT: All right. We will review the plea
9 agreement first and make sure that Mr. Resto understands it.

10 Mr. Resto, did you discuss this plea agreement with
11 your attorney?

12 THE DEFENDANT: Yes your Honor.

13 THE COURT: Did he explain to you all of its terms and
14 conditions?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: In reviewing the plea agreement, I note
17 that it contains an analysis as to how the Sentencing
18 Guidelines may impact on any prison term that may be imposed in
19 your case. Based on that analysis, the agreement states the
20 conclusion that if the guidelines were applied, the sentencing
21 range could be from 121 to 151 months. Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you also understand that the plea
24 agreement states the conclusion that the range for a fine in
25 your case under the guidelines would be anywhere from \$30,000

LlQQresP

1 to \$1 million?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that Judge Wood is not
4 bound by the guidelines analysis contained in the plea
5 agreement, and that she is free to do her own analysis, which
6 may result in a guidelines range that is different from the one
7 stated in the plea agreement?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that even if Judge Wood
10 agrees with the guidelines analysis contained in the plea
11 agreement and therefore concludes that the guidelines range for
12 a prison term in your case is from 121 to 151 months, she would
13 still be free to impose a sentence that is either less than 121
14 or more than 151 months?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand that under the terms of
17 this plea agreement, you are agreeing not to seek a so-called
18 departure from the stated guidelines range even though you are
19 reserving your right to seek a sentence outside of the
20 guidelines based on the factors that are listed in Section
21 3553(a)?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that as long as Judge
24 Wood sentences you to a prison term of no more than 151 months,
25 you're giving up your right to challenge your prison sentence

LlQQresP

1 either by an appeal to the Court of Appeals or by any further
2 application to this court?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you also understand that under the
5 terms of the plea agreement, you are agreeing not to challenge
6 any term of supervised release --

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Hold on a second.
9 -- that is less than or equal to the statutory
10 maximum, which in this case is life?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you also understand that you are
13 agreeing not to challenge any fine that may be imposed as long
14 as it is not more than \$1 million?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Just in case it has not been done in this
17 case, I want to take a moment and give the prosecution warnings
18 under *Brady* as is now required under Rule 5(f) and warnings and
19 directions regarding that, especially because it is a
20 continuing obligation, of course.

21 So I direct the prosecution to comply with its
22 obligation under *Brady v. Maryland* and its progeny to disclose
23 to the defense all information, whether admissible or not, that
24 is favorable to the defendant, material either to guilt or to
25 punishment and known to the prosecution.

LlQQresP

1 Possible consequences for noncompliance may include
2 dismissal of individual charges or the entire case, exclusion
3 of evidence should there be a hearing and professional
4 discipline or court sanctions on the attorneys responsible.

5 I will enter a written order more fully describing
6 this obligation, the possible consequences of failing to meet
7 it, and I direct the prosecution to review and comply with that
8 order on a continuing basis.

9 Does the prosecution confirm that it understands its
10 obligations and will fulfill them?

11 MR. KROUSE: This is Michael Krouse. Yes, your Honor.

12 THE COURT: All right. So I just want to make sure
13 also, Mr. Resto, you understand that under the terms of this
14 plea agreement, even if it turns out that the government
15 illegally withheld from your counsel certain information that
16 would have been helpful to you in defending you at trial,
17 you're giving up your right to complain about that.

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: All right. I note that in the plea
20 agreement there is a paragraph regarding potential immigration
21 consequences. Do either counsel have any reason to believe
22 that the defendant is not a United States citizen as he has
23 represented today?

24 MR. KROUSE: No, your Honor. This is Michael Krouse.

25 MR. NEUMAN: This is Mr. Neuman. The answer is no,

LlQQresP

1 your Honor.

2 THE COURT: All right. Mr. Resto, I want you to
3 understand that I have no reason to believe that you are not a
4 United States citizen. You have told me that you are. But
5 just in case that is not the fact, I am going to make sure you
6 understand that if you are not a United States citizen, then
7 pleading guilty could subject you to deportation which in the
8 circumstances of your case could be mandatory, and if you're
9 deported, your conviction could prevent you from being admitted
10 to the United States in the future or becoming a citizen in the
11 future. Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you also understand that if by chance
14 you are not a citizen, you are agreeing by way of this plea
15 agreement to be bound by your guilty plea regardless of any
16 immigration consequences or perceived consequences that may
17 flow from your plea and sentence -- conviction and sentence?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: All right. Let me take one more look at
20 this plea agreement.

21 Do you understand that under the terms of this plea
22 agreement you are admitting the forfeiture allegation contained
23 in the indictment with respect to Count One, and you are
24 agreeing to forfeit to the United States any and all property
25 constituting or derived from any proceeds that you obtained,

LlQQresP

1 either directly or indirectly, as a result of the offense that
2 is described in Count One of the indictment as well as any and
3 all property that you used or intended to use to facilitate the
4 commission of that crime?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Before I go further, are there any other
7 provisions of the plea agreement that either attorney would
8 like me to go over with Mr. Resto to make sure he understands
9 the agreement?

10 MR. KROUSE: This is Michael Krouse. No. Thank you,
11 your Honor.

12 MR. NEUMAN: This is Mr. Neuman. No, your Honor.

13 THE COURT: All right. Mr. Resto, does your attorney
14 have your permission to sign this plea agreement on your
15 behalf?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Because we don't have a signed copy yet
18 and we're going to be obtaining one with Mr. Resto's signature,
19 Mr. Resto I am going to ask you to also please to affix -- I'm
20 sorry -- I'm going to ask Mr. Neuman to please also affix
21 Mr. Resto's signature when you submit the signed plea
22 agreement.

23 MR. NEUMAN: Yes, your Honor. I can email it to your
24 chambers and to the government as soon as this proceeding is
25 over.

LlQQresP

1 THE COURT: Just make sure that a fully signed copy --
2 it can be electronic, but a fully signed copy makes its way to
3 my deputy so that it can be put together with the other papers
4 from this plea.

5 MR. NEUMAN: Yes, I will. Thank you.

6 THE COURT: Mr. Resto, apart from what is in the plea
7 agreement itself, have any promises of any kind been made to
8 you to influence you to plead guilty?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Have any promises been made to you
11 regarding the actual sentence you will receive?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Do you understand that no one, including
14 your attorney or the government or this court, can give you any
15 assurance as to what your sentence will be as your sentence
16 will be determined solely by the sentencing judge after that
17 judge has ruled on any challenges to the presentence report,
18 has calculated the sentencing guidelines and has determined
19 whether there are grounds to adjust the guidelines range or to
20 sentence you outside of that range?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: All right. So, I just got a note from my
23 deputy saying that she doesn't actually -- she herself does not
24 actually need the fully signed plea agreement. You, of course,
25 have to make sure there is a fully executed copy of the

LlQQresP

1 agreement, but my deputy says she herself does not actually
2 need a copy. She would generally give it back to you after the
3 proceeding. So just take care of it between counsel as
4 required, OK?

5 MR. KROUSE: Yes, your Honor.

6 THE COURT: Back to the plea. Mr. Resto, has any
7 force, threat of force or any other kind of threats been made
8 against you, either directly or indirectly, to influence how
9 you plead today?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Is your plea voluntary and made of your
12 own free will?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Before I ask you to explain what you did,
15 let me ask the government please to summarize the elements it
16 would need to establish at trial to sustain the charge.

17 MR. KROUSE: Yes, your Honor. This is Michael Krouse
18 again. The offense for Count One has two elements --

19 THE COURT: Hold on a second. The lesser included
20 offense?

21 MR. KROUSE: Yes, excuse me.

22 The lesser included offense that the defendant is
23 pleading to has two elements: First, that two or more people
24 agreed to distribute and possess with intent to distribute
25 narcotics. And, secondly, that the defendant knowingly joined

LlQQresP

1 the agreement.

2 There is also a requirement for venue that the
3 government prove by a preponderance of the evidence that an act
4 in furtherance of the conspiracy was committed in the Southern
5 District of New York.

6 THE COURT: Mr. Resto, did you just now hear counsel
7 for the government, Mr. Krouse, summarize the elements of this
8 crime that it would have to prove at trial in order to obtain a
9 conviction against you on that charge?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that the government
12 would have to prove each of the elements of the crime beyond a
13 reasonable doubt in order to obtain a conviction against you?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you still wish to proceed with your
16 plea?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Let me ask you then, did you in fact
19 commit the offense that is a lesser included offense to Count
20 One that is described in the plea agreement?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Would you please tell us in your own words
23 what you did that makes you guilty of this crime.

24 THE DEFENDANT: Well, between 2015 and 2019, I agreed
25 with others to distribute cocaine. Among other things, in 2018

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1 I supplied cocaine to individuals in the Bronx. I understood
2 that those people intended to sell the cocaine to others. At
3 the time I did these things, I knew that they were wrong.

4 THE COURT: All right. Let me ask both counsel if
5 either of you believe there are any additional facts that need
6 to be elicited for a satisfactory plea. Counsel, Mr. Krouse?

7 MR. KROUSE: No, your Honor. The government will
8 proffer that acts in furtherance of the conspiracy, including
9 the distribution of the narcotics at issue in the conspiracy,
10 occurred in the Bronx which is in the Southern District of New
11 York.

12 THE COURT: I think Mr. Resto mentioned that his
13 conduct involved the Bronx.

14 MR. KROUSE: Yes, your Honor.

15 THE COURT: Mr. Neuman, do you believe any additional
16 facts need to be elicited for a satisfactory allocution?

17 MR. NEUMAN: This is Mr. Neuman. No, I think that's
18 sufficient, your Honor.

19 THE COURT: Let me ask both counsel. Do either of you
20 believe there are any additional questions of any kind that
21 should be asked of Mr. Resto today?

22 Mr. Krouse?

23 MR. KROUSE: No, your Honor. Thank you.

24 THE COURT: Mr. Neuman?

25 MR. NEUMAN: No, your Honor.

LlQQresP

1 THE COURT: Do either of you know any reason why I
2 should not recommend acceptance of the plea?

3 Mr. Krouse?

4 MR. KROUSE: No, your Honor.

5 THE COURT: Mr. Neuman?

6 MR. NEUMAN: No, your Honor.

7 THE COURT: All right. Then based on my colloquy with
8 Mr. Resto, I conclude that he does understand the nature of the
9 charge to which he is pleading and the consequences of his
10 plea. I'm also satisfied that his plea is voluntary, and that
11 there is a factual basis for the plea.

12 I will also note for the record that I see no issue
13 here with respect to Mr. Resto's competence to enter a plea.
14 He seemed fully able to participate in these proceedings today.

15 Accordingly, I hereby recommend that Judge Wood accept
16 the proffered plea to the lesser included offense to Count One
17 of the indictment in 19 Civ. 116.

18 Has Judge Wood set a sentencing date?

19 MR. KROUSE: She has not, your Honor.

20 THE COURT: Is defendant in custody?

21 MR. KROUSE: He is. We will just need a control date.

22 THE COURT: So 90 days for a control date? Aisha, do
23 you have a 90-day control date for me?

24 DEPUTY CLERK: That would be April 26, 2021.

25 THE COURT: April 26 is a control date. Please be in

LlQQresP

1 touch with Judge Wood's chambers.

2 Is there any issue here as to bail?

3 MR. NEUMAN: This is Mr. Neuman. No, your Honor.

4 THE COURT: I'm going to ask the government to prepare
5 the prosecution case summary for purposes of the presentence
6 report and to deliver it to the probation department no later
7 than two weeks from today, 14 days.

8 I'm also going to ask defense counsel to contact the
9 probation department to schedule a presentence interview of
10 your client to be held within that same two-week window.
11 Please make yourself available for that interview so that the
12 matter can be moved along.

13 I assume the government will order a copy of the
14 transcript of this allocution and will submit it, together with
15 any necessary additional paperwork to Judge Wood, so that she
16 may act on my recommendation.

17 Is there anything else?

18 MR. KROUSE: Not from the government, your Honor.

19 Thank you.

20 MR. NEUMAN: Not from defense, your Honor.

21 THE COURT: Best of luck to you, Mr. Resto.

22 THE DEFENDANT: Thank you, your Honor.

23 THE COURT: You're welcome. We are adjourned.

24 (Adjourned)